

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JAMES FRANCIS SPRING,  
 Plaintiff,

v.

THE FINGERHUT COMPANIES, INC., et  
 al.,  
 Defendants.

Case No. 2:20-cv-02212-GMN-NJK

**ORDER**

[Docket No. 14]

Pending before the Court is Plaintiff's motion for entry of default judgment. Docket No. 14. The motion is properly resolved without a hearing. *See* LR 78-1.

**I. Personal Jurisdiction**

The Court's personal jurisdiction over a defendant is generally a waivable defense that the Court does not raise *sua sponte*. *See* Fed. R. Civ. P. 12(h)(1). Nonetheless, "[w]hen entry of default judgment is sought against a party who has failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties." *Tuli v. Republic of Iraq*, 172 F.3d 707, 712 (9th Cir. 1999). Thus, after giving Plaintiff notice and an opportunity to assert jurisdictional facts, the Court may dismiss an action for lack of personal jurisdiction. *See id.* at 712–13.

Plaintiff bears the burden of showing that Defendant is subject to the forum court's jurisdiction, which can be satisfied through a prima facie showing. *See High Tech Pet Prods., Inc. v. Juxin Pet Prod. Co.*, 2013 WL 1281619, \*4 (E.D. Cal. Mar. 27, 2013). "To establish a prima facie case, plaintiffs are not limited to evidence that meets the standards of admissibility, but rather, they may rest their argument on their pleadings, bolstered by such affidavits and other written materials as they can otherwise obtain." *Heirdorn v. BBD Marketing & Mgmt. Co.*, 2013 WL 6571629, \*7 (N.D. Cal. Aug. 19, 2013). Although the Court must generally accept as true factual

1 allegations in the complaint, “mere ‘bare bones’ assertions of minimum contacts with the forum  
2 or legal conclusions unsupported by specific factual allegations will not satisfy a plaintiff’s  
3 pleading burden.” *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007).

4 In his first amended complaint, Plaintiff alleges that Defendant, upon information and  
5 belief, is a corporation incorporated under the laws of the State of Minnesota authorized to do  
6 business in the State of Nevada. Docket No. 4 at 2. Thus, to establish personal jurisdiction Plaintiff  
7 must show that, *inter alia*, Defendant expressly aimed its conduct at the forum state. *See*,  
8 *Washington Shoe Co. v. A-Z Sporting Goods, Inc.*, 704 F.3d 668, 673 (9th Cir. 2012). United  
9 States District Judge Gloria M. Navarro addressed the relevant standards for this inquiry:

10 “Express aiming” at the forum state includes the requirement of  
11 “something more” than simply “the broad proposition that a foreign  
12 act with foreseeable effects in the forum state always gives rise to  
13 specific jurisdiction.” “[T]he ‘express aiming’ requirement is  
14 satisfied, and specific jurisdiction exists, ‘when the defendant is  
alleged to have engaged in wrongful conduct targeted at a plaintiff  
whom the defendant knows to be a resident of the forum state.’”

15 *Boyd Gaming Corp. v. B Hotel Group, LLC*, 2014 WL 643790, \*3 (D. Nev. Feb. 18, 2014) (quoting  
16 *Washington Shoe*, 704 F.3d at 675). Judge Navarro further indicated that “the key question is as  
17 to the sufficiency of the evidence showing the defendant’s knowledge that the impact of its acts  
18 would be felt in the forum.” *Boyd Gaming Corp.*, at \*4. Neither Plaintiff’s first amended  
19 complaint nor the instant motion for entry of default judgment provides any indication that  
20 Defendant expressly aimed its conduct at Nevada. Plaintiff, therefore, has not met his burden to  
21 show that Defendant is subject to this Court’s jurisdiction.

## 22 **II. Damages**

23 A plaintiff seeking default judgment has the burden of proving his damages. *See Shanghai*  
24 *Automation Instrument Co. v. Kuei*, 194 F. Supp. 2d 995, 1010 (N.D. Cal. 2001). Generally,  
25 damages are proven through the submission of evidence or the holding of an evidentiary hearing.  
26 *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003).

27 In his first amended complaint, Plaintiff seeks damages for Defendant’s alleged violation  
28 of the Telephone Consumer Protection Act. Docket No. 4 at 5. Plaintiff, however, fails to allege

1 a certain sum of damages. *See id.* Rather, Plaintiff generally alleges that he seeks judgment for  
 2 actual, statutory, and treble damages, as well as costs and reasonable attorney fees. *Id.* In the  
 3 instant motion, Plaintiff supports his request for damages as follows:

4 As confirmed by the Declaration of James Spring, the calls from  
 5 Defendant began in October 2019, and were numerous throughout  
 6 2020. In total there were a minimum of 70 calls, with Spring  
 7 revoking any consent on the initial call from Defendant. The  
 8 automated dialer was used by Defendant, and without Spring's  
 9 consent. For calls 1–5, the Court should assess the minimum  
 10 statutory penalty of \$500. For the remaining calls, 6–70, Plaintiff  
 11 should be awarded statutory penalties of \$1,500 because of the  
 consistent revocation of consent by Plaintiff. For calls 1–5, Plaintiff  
 should be awarded \$2,500 in statutory damages. For calls 6–70,  
 Plaintiff should be awarded \$97,500 for the willful violation  
 following the revocation of consent.

12 *Id.* at 7. Plaintiff further submits that he is entitled to \$2,950 in attorney's fees and \$573.70 in  
 13 costs. *Id.* Absent from Plaintiff's motion, however, is any citation to legal authority for the  
 14 requested damages. Plaintiff provides no explanation whatsoever to establish that over \$100,000  
 15 in damages, fees, and costs is reasonable for the 70 unwanted calls he allegedly received. Plaintiff,  
 16 therefore, has not met his burden to prove damages.

### 17 **III. Conclusion**

18 Accordingly, Plaintiff's motion for entry of default judgment, Docket No. 14, is hereby  
 19 **DENIED** without prejudice.<sup>1</sup>

20 IT IS SO ORDERED.

21 Dated: August 4, 2021

22   
 23 \_\_\_\_\_  
 Nancy J. Koppe  
 United States Magistrate Judge

24  
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 26  
 27 <sup>1</sup> The Court expresses no opinion herein as to the merits of the motion other than noting  
 28 the above defects. Counsel must carefully review the legal requirements for seeking entry of  
 default judgment and must ensure that any renewed motion suffices for the relief being sought.